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EXAMINER

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/902,923
Filing Date: July 10, 2001
Appellant(s): ENFIELD, PAUL S.

John F. Guay
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/3/09 appealing from the Office action mailed 10/9/08.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5297685	Ramey	3-1994
6012244	Begum et al.	1-2000

Porter, Stephen S. "The Influence of Brand Recognition on Retail Store Image" The Journal of Product and Brand management, vol. 6, Iss. 6 (1997); pg. 373.

(9) Grounds of Rejection

The following ground(s) of rejection were made in the final action mailed 10/9/08 and are applicable to the appealed claims:

Claims 17-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ramey (US Patent 5,297,685) in view of Begum et al. (US Patent 6,012,244), Porter ("The influence of brand recognition...") and Examiner's Official Notice.

Ramey discloses the claimed combination of a plurality of display signs and a store facility (such as the display signs shown in figures 1-7 used in self-service stores disclosed in column 1 lines 38+ that contain "bulk commodities such as moulding and the like"), with the combination being particularly adapted to assist customers to locate products in the store facility and to obtain greater familiarity of an overall pattern of product location in the store facility, said combination comprising:

a) a store facility having a shopping area in which store products are made available to

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customers in the shopping area, said shopping area being arranged in a plurality of elongate aisles having first and second aisle end portions (for example figure 6 discloses an example of an aisle in the store);

b) a substantial portion of the store products located in the aisles being *related products* (for example the products in the self-service store would be related products as the products would be hardware and where said store products are categorized as:

i) products in a plurality of primary location related product categories with the products in each primary location related product category being in a related primary location area of the shopping area (for example the primary location could be moulding, or it could be construed to be a type of moulding, any categorization would apply);

ii) products in each primary location related product category which are in turn classified in a plurality of secondary location related product categories (for example if the primary location is defined as moulding the secondary location could be construed to be any type of moulding as shown in figure 7. If the primary location is defined as a type of moulding, such as base moulding, the secondary location could be construed to be, for example, single cut or double cut base moulding.), with the products in each secondary location related product category being in a related secondary location area (for example different types of base moulding are located together, for example in the same aisle or section of the aisle. Figure 6, for example, shows the moulding in one aisle and specific types of moulding located in sections of the aisle or in “secondary locations” broken down by these parts of the aisle);

iii) products in at least some of said secondary location related product categories being

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in subcategories of a related one of the secondary location related product categories

(For example if the secondary location is defined as the type of moulding, or base

moulding, a sub category may be construed to include the different types of base

moulding such as single or double cut moulding that is related to other moulding that is

single or double cut, such as single or double cut window moulding. For example if the

secondary location is defined as single or double cut base moulding a sub category may

be construed to include wood or composite and therefore the moulding is related to all

other moulding that is wood or composite);

c) a substantial portion of products located in each of the aisles being location related to

other products in that aisle as location related products in a manner that one location

related product at a particular location in an aisle would indicate a probability of other

products that are location related to said one location related product would be in that

aisle and as a possibility in closer proximity to said one location related product (for

example figure 6 discloses an aisle with related products as they are all moulding, base

moulding indicates a probability of other types of moulding as they are commonly

accepted to be together);

d) a plurality of display signs, each of which is located in, or proximate to, a related

aisle, or positioned so as to be associated with said related aisle in a manner that each

display sign is visible so that a shopper observing the sign is able to associate the sign

with its related aisle and the products within that aisle (the disclosed self-serve store of

column 1 lines 38+ has signs such as ones shown in figure 6 throughout the store to

identify moulding or like bulk product locations);

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e) each of said display signs having a plurality of different product representations of products which are representative of other location related products in its related secondary location related product category or categories or subcategory or subcategories in its related aisle, with the product representations that are on the display sign being representative of a greater number of other products which are in the aisle associated with that display sign so as to be present along a substantial length of the aisle, and which are not on the display sign and are generally associated by location with the product representations that are on the display sign, said product representations on that display sign having an overall product appearance including and/or graphic representations and provided in at least one group in proximity or overlapping relationship to one another (for example figure 7 discloses a display sign, present along a substantial length of the aisle, having a plurality of pictures grouped in at least one group in proximity or overlapping relationship to one another of different moulding products that are representative of the greater number of other products in the aisle and other moulding products in the moulding, type of moulding, single or double cut, and wood or composite locations or subcategories); and,

f) the number of product representations in the display signs being at most a relatively small fraction of the number of location related products in the aisle that is associated with that display sign (For example Figure 7's product representations of one or two base mouldings and window mouldings is only a small fraction of the moulding related products in the aisle associated with the sign), with a substantial portion of the product representations on the display sign having a direct relationship to the product which it

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shows and an indirect relationship as being location related to other products in that aisle (For example, the picture of base moulding has a direct relationship to all base moulding in the aisle while it shows an indirect relationship to chair rail moulding located in that aisle while still being location related as it is moulding); and

g) the display signs being positioned at a substantial number of said aisles so that a customer in the shopping area would be able to observe the display signs and associate with each display sign and its related aisle the more numerous various location related products (For example in the self-service store there would be signs positioned above aisles containing moulding, as shown in figure 7's example and other bulk commodity aisles within the store);

whereby a customer is able to observe individual display signs and by observing a much smaller number of product representations on each display sign to be able to obtain location information of not only the products which are the same as the product representations on the display sign, but also of a substantially greater number of related products which are in that aisle and of which the displayed product representations are representative, and also the customer is able to become more familiar with product locations in the aisles by means of the customer associating the display signs as a memory aid of aisle locations (customers seeing the pictures of the product, such as base moulding, locate the base moulding in the picture and also all of the moulding in the aisle which the picture represents. This allows the customer to become familiar with product locations via the signs as a memory aid for aisle locations);

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But is silent regarding:

Under b) where the store products located in the aisles include brand name products which comprise one or more of frozen food products, refrigerated food products, food products which are canned, bottled or packaged food products and drug store products;

Under iv) where a substantial portion of the products in the primary location related product categories are brand name products with an overall brand name product appearance including the brand name and any packaging and/or graphic representations; and

Under e) where the pictures on the signs include brand name product representations having an overall brand name product appearance including the brand name and any packaging with a substantial portion comprising trademarks which are registered in the U.S. Patent and Trademark Office.

Begum et al. teaches, for example in Figure 1, that it is old and well known in the art of retail for stores to sell grocery products that have overall brand name product appearances including brand names and any packaging and/or graphic representations and to use pictures on signs that include brand name product representations having an overall brand name product appearance including the brand name and any packaging with a benefit being to sell grocery items that consumers recognize and favor. Figure 1 shows a grocery item, orange juice, 14 and related sign having an overall brand name appearance including the name ACME and packaging including the orange juice container with a graphic representation including the orange with leaves and special

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fonts for "ACME FLA Orange Juice". Therefore it would have been obvious to one of ordinary skill in the art of retail to modify the signs and store facility of Ramey to sell grocery products with brand names, brand appearance, brand graphic representation and brand packaging as taught by Begum et al. in order to sell grocery items that consumers recognize and favor.

Porter teaches, in the abstract, that it is old and well known in the art of grocery stores for a substantial portion of the products in the primary location related product categories to be brand name products to have a store have a favorable store image. For example the second to last sentence of the abstract discusses that stores can ensure a favorable image by having a merchandise mix composed of a relatively high number of brands with high and strong brand images. Therefore it would have been obvious to one of ordinary skill in the art of retail to modify the signs and store facility of Ramey and Begum et al., as modified above, to include a substantial portion of the products with brand name products as taught by Porter in order to have a strong store image.

Examiner takes Official Notice that it is notoriously old and well known in the art of grocery retail for grocery items to include brand name products which comprise one or more of frozen food products, refrigerated food products, food products which are canned, bottled or packaged food products and drug store products and where these brand names and packaging comprise trademarks with are registered in the U.S. Patent and Trademark Office to sell a wide array of foods and drugs and to provide companies with brand name protection. Therefore it would have been obvious to one of ordinary

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skill in the art to modify the combination of display signs and store facility of Ramey and Begum et al., as modified above, to include brand name products which comprise one or more of frozen food products, refrigerated food products, food products which are canned, bottled or packaged food products and drug store products and where these brand names and packaging comprise trademarks which are registered in the U.S. Patent and Trademark Office as taught by Examiner's Official Notice in order to sell a wide array of foods and drugs and to provide companies with brand name protection.

Regarding claim 18, further comprising at least one store directory which is visible to customers in the shopping area (figure 4 of Ramey discloses a store directory), said store directory listing identifying names of products (such as lists "windows"), with some of the identifying names also having a product representation which is within the scope of the names of the products listed in the directory but is silent regarding the representations having brand names. Begum et al. further teaches, for example in Figure 1, that it is old and well known in the art of retail for stores to use pictures on signs that include brand name product representations having an overall brand name product appearance including the brand name and any packaging with a benefit being to sell grocery items that consumers recognize and favor. Figure 1 shows a grocery item, orange juice, 14 and related sign having an overall brand name appearance including the name ACME and packaging including the orange juice container with a graphic representation including the orange with leaves and special fonts for "ACME FLA Orange Juice".

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Therefore it would have been obvious to one of ordinary skill in the art of retail to modify the signs and store facility of Ramey, Begum et al. and Examiner's Official Notice, as modified above, with the brand name product representations as taught by Begum et al. order to sell grocery items that consumers recognize and favor. For example it would be obvious to modify the directory sign of Ramey's Figure 4 to show pictures of brand name grocery items instead of trim mouldings.

Regarding claims 19, 20, 21 , the signs and store facility of Ramey, Begum et al. and Examiner's Official Notice, as modified above for claim 18, is silent regarding the use of a display direction sign indicating a direction to a store location or locations. Examiner takes Official Notice that it is notoriously old and well known in the art of signs and maps to show direction to allow individuals to locate places. Therefore it would have been obvious to one of ordinary skill in the art of signs and mapping to modify the signs and store facility of Ramey, Begum et al. and Examiner's Official Notice, as modified above for claim 19, with direction indication as taught by Examiner's Official Notice order to show direction to individuals wishing to locate places. For example it would be obvious to modify the directory sign of Ramey's Figure 4 to have directions to find desired grocery items. This could be done with a map, using aisle numbers or arrows. Examiner also notes that it would have been obvious to make the sign or map a printed matter so as to be portable.

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Regarding claim 22, Ramey discloses category signs, for example see sign near “E” in Figure 7 at spaced locations along at least some of said aisles displaying product representations which are more specific to product categories at said spaced locations along at-least some of said aisles. Examiner notes that the images have been modified above to include trademarked item images.

Regarding claim 23, wherein at least one aisle for frozen products are present and located in freezers cabinets. Examiner notes that the store products of Ramey have been modified to include grocery items that are frozen, therefore would be located in an aisle with freezers.

Regarding claim 24, where products include drug store products, and said category signs are at spaced locations in a section of the shopping area where the drug store related products are located. Examiner notes that the store products have been modified above to include grocery items that are drugs and would be located in an aisle with other drugs or drug store related goods.

Regarding claim 25, where the display signs have in addition to the brand name product representations a word or words identifying products and/or categories of products at that related aisle combination (for example, Ramey discloses in figure 7 words like Mouldings or Window or door in addition to product representations). Note that the product images have been modified above to include trademarked item images.

Regarding claim 26, wherein said store facility has existing display signs at access regions which display a word or words identifying products and/or categories of products at the access region and the display signs with the brand name product representations are in addition to the word or words that are displayed (for example, Ramey discloses a directory in figure 4 located at an entrance. Examiner notes that the images in the directory have been modified above to include trademarked images.)

Regarding claim 27, where there are other display signs in the shopping area which display text identifying products and/or product categories, and these are in addition to said display signs with the brand name product representations (for example these “other” display signs could be the signs shown by “E” in figure 6).

(10) Response to Argument

a) Appellant argues that Ramey's figures 6 and 7 do not suggest anything with regard to claimed features related to each of a plurality of display signs having “a plurality of different brand name representations...provided in at least one group in proximity or overlapping relationship to one another”.

Examiner respectfully disagrees as Figure 7 of Ramey clearly discloses providing a plurality of different product representations on a sign and further provides at least one group in proximity or overlapping relationship to one another. Ramey Figure 7 has different product representations such as window trim 84, base trim 76 and crown

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moulding 74. Further the representations are provided in at least one group in proximity to one another as the trim and moulding images are grouped together on the ends of the sign. Examiner notes that Begum and Porter were used to modify Ramey to meet the other claim limitations. Begum was used to teach putting brand names on product representations and Porter was used to modify the goods in the store of Ramey to contain goods that have brand names, thus having more than one brand names on the sign of Figure 7 shown.

b) Appellant argues that Ramey's directed to an indexing type system where a person can find a specific item not related items.

Examiner notes that the Ramey indexing system is elaborate and goes beyond the sign of figure 7 attempting to index every single piece of moulding, but the sign of figure 7 does not show every single piece of moulding, only select representations and is the sign used for the rejection. An individual going down the isle where the sign shown in figure 7 would know that items related to the trim types shown would be found on that isle. For example different baseboard trim would likely be found there and the individual would not have to look at the more detailed trim signs to find related items, but could just look at the merchandise in the isle, see Figure 6.

c) Appellant argues that Porter does not discuss or suggest anything whatsoever about display signs, much less "a plurality of different brand name representations...provided in at least one group in proximity or overlapping relationship to one another".

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Examiner has not used Porter to teach display signs as Ramey already contains a display sign, only that it is old and well known in the art of stores to sell a ***plurality of products that have brand names*** in order to sell items that consumers recognize and favor. Therefore it would have been obvious to sell multiple brand name products in the store and to have other brand names on the images shown in Figure 7. The Ramey reference is silent regarding the image representations having brand names on them and where items in the represented area have more than one item having brand names, which Porter teaches to be old and well known. Porter, in the last two sentences of the abstract, discusses how having a high number of brands with high brand awareness gives the store a more favorable store image with customers.

Examiner notes that the sign in figure 7 in Ramey already helps a person find his way through the store and know where products are, so Porter is not needed to teach these argued limitations.

d) Appellant argues that Begum fails to “reasonably suggest selecting “ACME FLA Orange Juice” as the sign display for the given product group based on its brand name recognition” and further fails to hint at a display sign provided with “a plurality of different brand name representations...provided in at least one group in proximity or overlapping relationship to one another”.

Examiner has not used Begum to teach selecting an image to display for the given product group as Ramey already does that in figure 7 when it shows, for example, one selected base trim shown (such as 76). Begum teaches that it is old and well known in the art of point of retail sales advertising to use brand names on product

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representations (such as the “brand name representation” of the Acme orange juice container with the ACME orange on it) on point of sales signage for advertising purposes, therefore it would have been obvious for one of ordinary skill in the art of retail sales advertising to replace the different product representations on the signs of Ramey with brand name product representations taught by Begum with the motivation being advertising to sell grocery items that consumers recognize and favor.

Examiner notes that Begum has been used to modify the store to contain grocery items and to modify the sign of Ramey figure 7 to apply to these grocery items, for example instead of saying “window and Door” and “Corner and Ceiling” it may say “Juice” and “Softdrinks”; additionally, instead of the trim representations, the representations on the side of the sign would be replaced with name brand product representations for grocery items sold in this isle, which may include the Acme orange juice bottle with the orange on it, the well recognized coke bottle, the Orangina bottle with logo...as examples. Begum is used to teach that product representations can include brand name recognition to promote brand name products, therefore it would be obvious, since there are multiple product representations on the Ramey sign, that there be multiple brand name product representations on a sign.

Examiner further notes that Ramey all ready discloses selecting representations for a display sign having at least one group in proximity or overlapping relationship to one another such as by showing base trim and chair rail.

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e) Appellant does not dispute that a grocery store would have included the claimed food products but argues that a retail store with groceries “says nothing regarding the claimed features of a display sign provided with a plurality of different brand name representations in at least one group in proximity or overlapping relationship to one another, with these brand name representations being representative of a greater number of products...”

Examiner has not used Official Notice to teach the above listed limitations, as they are already disclosed in Ramey or taught by Porter and Begum as discussed above, but to show that it is notoriously old and well known in the art of grocery retail for grocery items to include brand name products which comprise one or more of frozen food products, refrigerated food products, food products which are canned, bottled or packaged food products and drug store products and where these brand names and packaging comprise trademarks which are registered in the U.S. Patent and Trademark Office to sell a wide array of foods and drugs and to provide companies with brand name protection. Therefore it would have been obvious to one of ordinary skill in the art to modify the combination of display signs and store facility of Ramey, Porter and Begum et al., as modified above, to include brand name products which comprise one or more of frozen food products, refrigerated food products, food products which are canned, bottled or packaged food products and drug store products and where these brand names and packaging comprise trademarks which are registered in the U.S. Patent and Trademark Office as taught by Examiner's Official Notice in order to sell a wide array of foods and drugs and to provide companies with brand name protection.

Applicant argues that the mere fact that a retail store would have a large number of brands says nothing regarding the claimed features of a display sign provided with a plurality of different brand name representations in at least one group in proximity or overlapping relationship to one another, with these brand name representations being representative of a greater number of other products that are in the aisle associated with the display sign so as to be present along a substantial length of the aisle. Examiner notes that the modified sign of Ramey and Begum having for example the Acme orange juice and the Coke brand name representations on it have overlapping relationships, such as drinks, and are representative of a greater number of other products that are in the aisle associated with the display sign, such as they represent all other types of Coke products like Diet Coke or Sprite and all other types of orange juice as these items are sold in the same area.

f) Appellant argues that it is against common sense to include “a plurality of different brand name product representations of products...provided in at least one group in proximity or overlapping relationship to one another”.

Examiner has pointed out that Figure 7 of Ramey discloses a plurality of product representations of products that are provided in at least one group in proximity to one another. The trim images are different representations of products and are provided in a group on the sign and overlap in relationship to one another as they are trim sold in that area of the store. Begum was used to teach placing a brand name on the image for

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product representation advertising. Note that the store items are modified by Begum, Porter and Examiner's official notice to be multiple name brand grocery store items that include frozen goods, canned goods, etc...

g) Appellant argues that Ramey Teaches Away from the Claimed Invention because it is geared for locating "every single molding".

Examiner agrees that Ramey is geared to locating every single molding, but that the sign shown in figure 7 does not locate every single molding and this is the sign used to provide customers with a "memory hook". Just because Ramey has additional locating features does not mean that it does not meet the Appellants claim limitations. The sign shown in figure 7 does provide a display with only a small fraction of the products in that aisle so that there is a large number of other products which are related products which would be assumed as being likely in that same aisle. Such as other types/styles of base, chair or crown trim.

h) Appellant argues that the Second and Third Declarations of Paul Enfield are evidence of nonobviousness.

Examiner gave full consideration to the Declarations filed 7/17/08 and 7/11/08, 9/15/06 and 4/7/09 under 37 C.F.R. 1.132 by Paul Enfield and David Weber and found they did not show clear evidence of unexpected results and are insufficient to overcome the rejection of claims as set forth in the last Office actions because: the study on which these declarations are based were not included and thus are unsupported by evidence. Examiner notes that increased sales for the store and the brand name products advertised may be linked to many other variables outside the specifically claimed

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signage within the store, such as local population increases, elimination of competing stores, changes in accessibility to the store, change in demographics of customers, changes in all advertising, change in customers economical standing, and the amount of the increase in brand name sales has not been proven to exceed well known targeted point of sale advertising (such as simply displaying a "coke" ad above an isle) and are thus not proven to be unexpected results.

Examiner found they did not provide sufficient detailed information regarding sales of the "dry grocery" goods that had increased sales during the trial period from October 2000 to January 2001. It is at question as to what specific products actually had increased sales as some items are much more seasonable then others, such as baking goods over the winter and holiday time of year. Additionally that the sales results could be typical expected sales increases from having just a typical advertising posted in a store, such as the increased sales due to having a "Coke" banner located near the softdrink aisle.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Elaine Gort

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